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SUPREME COURT OF THE UNITED STATES.

No. 179.

BENJAMIN D. GODFREY, PLAINTIFF IN ERROR,

vs.

CHARLES T. EAMES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

GOVERNMENT PRINTING OFFICE.

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1 UNITED STATES, *ss:*

The President of the United States to the judges of the circuit court holden in and for the district of Massachusetts, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Benjamin D. Godfrey, of Milford, in said district, plaintiff, and Charles T. Eames, of said Milford, defendant, in a plea of the case, a manifest error has intervened to the great damage of the said Godfrey, as in his complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States on the first Monday of December next, at Washington, being the present seat of the national government; that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-sixth.

H. W. FULLER, *Clerk.*

Allowed by—

NATHAN CLIFFORD,
Associate Justice Sup. C. U. S.

2 United States of America.

CIRCUIT COURT U. S.,
Massachusetts Dist., ss:

The judges of the circuit court of the United States for the district of Massachusetts, pursuant to the command within contained, do make return of this writ, and send herewith the record and process in the suit within mentioned, and all things concerning the same, under the seal of said circuit court, and certified by the clerk thereof.

In testimony whereof, I, Henry W. Fuller, clerk of said circuit court, have hereunto set my hand and the seal of said court, this eighteenth day of November, A. D. 1862.

H. W. FULLER, *Clerk.*

3 United States of America.

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District, ss:

To Charles T. Eames, of Milford, in said district, greeting:

You are hereby cited and admonished to be and appear before the chief justice and the associate justices of the Supreme Court of the United States on the first Monday of December next, (A. D. 1862,) at Washington, the present seat of the national government, then and there to answer to a writ of error this day sued out of the clerk's office of the circuit court of the United States, for the first circuit and district of Massachusetts, wherein Benjamin D. Godfrey, of Milford, in the State of Mass'tts, is plaintiff, and you are defendant, to show cause, if any you have, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-seventh day of October, A. D. one thousand eight hundred and sixty-two.

NATHAN CLIFFORD,
Associate Justice Sup. C. U. S., assigned to the 1st Circuit.

4 MILFORD, *October* 31, 1862.

U. S. OF AMERICA,
Mass. Dist., ss:

I certify that I have notified the within named Eames, by leaving at his last and usual place of abode a true and attested copy hereof.

JOHN S. KEYES,
U. S. Marshal.

Fee	$2
Copy	1
Exp.	2
	5

5 Know all men by these presents that we, Benjamin D. Godfrey, of Milford, in the district of Massachusetts, as principal, and W. C. McNish, of Boston, in said district, and Charles J. White, of Chelsea, in said district, as sureties, holden and stand firmly bound and obliged unto Charles T. Eames, of said Milford, in the full and just sum of five hundred dollars, to be paid unto the said Charles T. Eames, his heirs, executors, administrators, or assigns; to which payment well and truly to be made we do bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, dated the thirtieth day of October, in the year of our Lord one thousand eight hundred and sixty-two.

Whereas Benjamin D. Godfrey, the plaintiff in error, has sued out a writ of error against Charles T. Eames, which writ of error is to be filed in the Supreme Court of the United States, to correct a judgment of the circuit court of the United States for the first circuit and district of Massachusetts, wherein Benjamin D. Godfrey was plaintiff *vs.* Charles T. Eames, and is about to prosecute the said writ of error in said Supreme Court of the United States for the decision of the said Supreme Court in said case, agreeably to the act of Congress in such case made and provided.

The condition of this obligation is such, that if the said Benj. D. Godfrey shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his said writ of error, then this obligation is to be void and of no effect; otherwise, to remain in full force and virtue.

BENJ. D. GODFREY. [SEAL.]
W. C. McNISH. [SEAL.]
CHAS. J. WHITE. [SEAL.]

Sealed and delivered in presence of—
COMTEN BROWNE.

I approve of above sureties as sufficient.

P. SPRAGUE.

A true copy. Attest:

H. W. FULLER, *Clerk.*

6 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Wednesday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-two, before the honorable Nathan Clifford, associate justice, and the honorable Peleg Sprague, district judge.

BENJAMIN D. GODFREY, of Milford, manufacturer, in the district of Massachusetts, plaintiff,
vs.
CHARLES T. EAMES, of said Milford, manufacturer, defendant.
} In a plea of the case.

For that Reuben L. Lewis, of Milford, in the State of Massachusetts, being the original and first inventor of a certain new and useful improvement in boot-trees not before his said invention
7 known or used, and which had not for more than two years theretofore been in public use or on sale with his consent or allowance, and being a citizen of the United States, did, before the 2d day of March, 1858, make application in due form of law for letters patent of the United States for said improvement, in pursuance of

which application letters patent of the United States did issue to the said Lewis, bearing date the 2d day of March aforesaid, and numbered 19508, granting and securing, according to law, to the said Lewis, his heirs, administrators, or assigns, for the term of fourteen years from the said second day of March, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement therein entitled an improvement in boot-trees; said letters patent being sealed with the seal of the Patent Office, and signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, and otherwise in due form of law, all which by the said original letters patent now in court produced will more fully appear. And afterwards, to wit, on or about the
8 15th day of June, A. D. 1859, the said Lewis, by his deed of that date, assigned, sold, and conveyed to the plaintiff all his, the said Lewis, right, title, and interest in and to the said improvement and letters patent, as by said deed duly recorded in the Patent Office, and now in court produced, will more fully appear.

And the plaintiff further says, that from the time of the issue of said letters patent by the said assignment to the plaintiff, the said Lewis has made, used, and vended to others to be used, the said improvement and boot-trees, containing the same, to his great advantage and profit, and that the plaintiff has done the same since the date of said assignment, and that the said patent and exclusive right have been and were of great value to the plaintiff; yet the said defendant, well knowing the premises, but contriving to injure the plaintiff, did, on the 20th of June, A. D. 1859, and at divers times since that date, and during the said time of fourteen years mentioned in said letters patent, and since the said assignment to the plaintiff before the commencement of this suit at Boston, to wit, at Milford, in
9 the State and district of Massachusetts, unlawfully and wrongfully, and without the consent and allowance, and against the will of the plaintiff, manufacture, use, and sell divers, to wit, two hundred boot-trees, embracing and containing said improvement patented as aforesaid to the said Lewis, and in violation of the exclusive right to make, use, and vend the same, vested as aforesaid in the plaintiff, and contrary to the form of the statute of the United States in such case made and provided. By means of which said several grievances the plaintiff has been greatly injured and deprived of great profits and advantages which he might and otherwise would have derived from said invention, and has sustained actual damage to the amount of four thousand dollars, and by force of the statute aforesaid an action has accrued to him to recover the said actual damage and such additional amount not exceeding in the whole three times the amount of such actual damage as the court may see fit to order an adjudge; yet the said defendant, tho' requested, has never paid t same or any part thereof to the plaintiff, but has hithert
10 refused and yet refuses so to do, to the damage of the said Godfrey, as he says, the sum of five thousand dollars.

The writ in this case bears date the twenty-first day of July, A. D. eighteen hundred and sixty; and the action was duly entered at the

October term of this court of the same year, when and where the plaintiff appears by Messrs. Browne and Maynadier, his attorneys, and said Charles Eames appears by Frederick A. Brooks, his attorney, and at the same term, (to wit, October 29,) the following pleas and notice of defence are filed.

And now the defendant comes, &c., when, &c., and for plea says he is not guilty in manner and form as the plaintiff hath declared against him, and of this he puts himself on the country, by F. A. Brooks, his attorney; and the plaintiff doth the like, by his attorneys, Browne & Maynadier.

11 The defendant in the above cause hereby notifies the plaintiff of the following special matters to be given in evidence by him in defence of said suit, in addition to what may be proved under the plea of general issue, viz: that the said Lewis, in the plaintiff's declaration mentioned, was not the original and first inventor of the improvement in boot-trees claimed by him in said letters patent, but that the same was known and used before the time of said Lewis's supposed invention thereof, as follows, viz:

By Wm. Upfield, of Lancaster, Ohio, at said Lancaster.
" Chas. T. Eames, of Milford Mass., at said Milford.
" J. W. Littlefield, " " " " "
" B. D. Godfrey, " " " " "
" A. S. Cook, " " " " "

Also that the same is described in letters patent granted to said Upfield by the U. S. government, dated June 25th, 1850; also that said alleged improvement was in public use and on sale with the consent and allowance of said Lewis more than two years before this application for the patent here in question, and that said letters patent are void.

By F. A. BROOKS, *his Attorney.*

12 The case was thence continued from term to term to the October term of this court, A. D. 1861, when issue having been joined as aforesaid, the cause is committed to a jury duly sworn to try the same, who, having heard all matters and things concerning the same, return their verdict in the words following, to wit: (Jan'y 28, 1862.)

The jury find that the defendant is not guilty in manner and form as the plaintiff in his writ and declaration hath alleged against him.

BENJAMIN LEWIS, *Foreman.*

The case was thence continued from term to term to this present term, when the defendant moves this hon. court for judgment on the said verdict. It is thereupon considered by the court that said Charles T. Eames do recover of said Benjamin D. Godfrey his costs of suit taxed at the sum of thirty-six dollars and seventy-three cents.

Upon the trial of the above-entitled cause, after the evidence was closed on both sides, and before the issue was submitted to the jury,

the defendant filed his bill of exceptions, which being found in conformity with the truth, was allowed by the court under the hand and seal of the presiding judge, and is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT,
Massachusetts District.

OCTOBER TERM, 1861.

13 The cause coming on for trial on the aforesaid issue and notice of special matter, the plaintiff put in evidence the letters patent declared on, of which the specification was in the words and figures following:

"To all to whom these presents shall come: Be it known that I, R. L. Lewis, of Milford, in the county of Worcester, and State of Massachusetts, have invented an improvement in boot-trees, and that the following is a full, clear, and exact description of the principle or character which distinguishes it from all other things before known, and of the usual manner of making, modifying, and using the same, reference being had to the annexed drawings. Figure 1 is a perspective view of the machine in working order; figure 2, a section through the back D referred to; figure 3, a section through the other part of the tree, showing the manner of operating the back; figure 4 are the foot pieces shown in two positions removed from the tree; figure 5 exhibits an upper view of the arrangement shown in figure 3 in section; figure 6, a perspective view of the back; figure 7, a view of the T-shaped ends of projections B B. My invention consists in an improvement in revolving or swivel boot-trees, whereby the
14 backs of the same may be readily detached for the purpose of using different sizes of backs. To effect this object I combine the back D with the stretching rod, as follows: B B are two projections from the axial stretching rod, the end E of which are T-formed, making crossheads to run in the inclined ways or guides F F. These guides are connected with the back, as shown in figure 2 and 3, and are inclined sufficiently to furnish the necessary leverage in distending the boot-tree by the action of the crossheads connected with the axial stretching rod. This rod has a longitudinal movement given to it in one direction by the bent lever H, operated by the treadle K, and is moved in the opposite direction by the helical spring L, and by its movements back and forth the tree is distended and contracted by the action of the crossheads upon the flanges *a a* of the inclined guides. The crossheads are entered within the inclined guides at the point M, and it will follow that when the axial rod is moved to this point, the backs at once become detached to the tree, and another size may be substituted without loss of time. The shift-
15 ing of backs with common boot-trees is readily done, but with the mounted swivelling boot-trees it has not been hitherto done, except by shifting the whole tree; and as it is necessary to shift backs frequently in boot-making, the convenient shifting of the backs becomes a great saving of expense, labour, and time.

"What I claim as my improvement in mounted swivelling boot-trees is combining the backs with the axial stretching rod by means of the inclined guides F and crossheads B, or other equivalent means, so that the backs can be readily changed in the manner and for the purposes herein set forth."

The plaintiff having proved his title to the letters patent and the infringement by the defendant, it appeared in evidence and was admitted by the plaintiff that the patentee, in the summer and fall of the year 1854, and since, publicly manufactured, used, and sold boot-trees containing his alleged invention, and that on the 31st January, 1855, he filed in the Patent Office his application for a patent in the words following, to wit:

Petition.

To the Commissioner of Patents:

16 The petition of Reuben L. Lewis, of Upton, county of Worcester, Massachusetts, respectfully represents: That he has invented a new and useful improved boot-tree, which he verily believes has not been known or used prior to his invention thereof. He therefore prays that letters patent of the United States may be granted to him therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the acts of Congress in that case made and provided, he having paid thirty dollars into the treasury, and complied with the other provisions of said acts.

REUBEN L. LEWIS.

Oath.

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk ss:

On this twenty-third day of December, A. D. 1854, before the subscriber, a justice of the peace for said county, personally appeared the within-named Reuben L. Lewis, and made solemn oath that he verily believes that he is the original and first inventor or discoverer of the "improved boot-tree," herein described, for which he solicits a patent, and that he does not know or believe that the same
17 was ever before known or used, and that he is a citizen of the United States.

JOEL GILES,
Justice of the Peace.

Specification.

Be it known that I, Reuben L. Lewis, of Upton, county of Worcester, Massachusetts, have invented a new and useful improved boot-tree, and I do hereby declare that the following description, with the accompanying drawings, forms a full, clear, and exact specification thereof.

The object of my invention is in stretching a boot to spread the whole, or the upper or lower part of the boot leg, more equally and better than can be done by boot-trees now in use.

To enable others skilled in the art to make and use my invention I describe its construction and operation, reference being had to the accompanying drawing, as follows :

Fig. 1 is a perspective view of my boot-tree.

Fig. 2 is a vertical longitudinal section.

Fig. 3 is a plan of either side of the centre piece, central sliding rod, coiled spring, and sliding crossheads.

Fig. 4 is an end view of the heel part of the leg.

Fig. 5 is a plan of the sliding crosshead.

Boot-trees being well known, only those parts and devices connected with my invention will be described. I construct in each part, the front and back of the boot-tree leg, two adjustable inclined planes, (*a*,) fig. 2, with their edges turned over inward, so as to form suitable bearings or flanges, (*b*,) for the ends of the crossheads, (*c*,) of the central rod (*d*,) to slide under; and I adjust the inclination of each plane, as may be desired, by a set screw (*e*,) at the end next the top of the leg.

I make the planes in the back part of the tree a little shorter than in the front part, so that the back part can come out, while the front part is held in by the crossheads of the central rod. I construct two double-headed cross slides (*f*) to work on the inclined planes and spread the boot-trees; and I screw one of them on to the central rod—about in the middle—and the other at the heel end. The central rod with its cross slides is guided in its movements by suitable slats (*g*) in the cross slides, working on the inner edges (*h*) of the centre piece (*i*) when the crossheads move up and down the inclined planes in spreading and contracting the boot-tree. I make notches (*j*) on the side of the central rod to catch on to the side of the hole through which it passes in the head of the centre piece, so as to hold the rod against the action of the coiled spring (*k*) at any desired point. I fasten the flanges (*l*) to cover the opening between the front and back part of the tree, when spread, to the centre piece itself, which ensures a complete covering of said opening. I make a rest (*m*) adjustable up and down by set screws in a slot (*n*) to support the heel of the boot-tree, and I make a device of leverage of double purchase, (*o*,) to be worked by the foot at the foot piece, (*p*,) to draw out the central rod in spreading the boot-tree to stretch the boot.

I insert the head (*q*) of the centre piece through a ring (*r*) turning on axial pins, (*s*,) supported by the circular arms of the bed-plate, and I secure the head within the ring by a screw (*t*) working into a groove (*u*) around the head, and I connect the ring by said arms (*v*) extending backward with a drop piece (*w*) by a joint pin through its upper end. This drop piece passes down through a hole in the top bench, and has a notch (*x*) on the back side to catch on to the under side of said bench, and is pressed back by the spring (*y*,) and pulled forward by the bent end of the rod (*z*;) by this device

the boot-tree is made adjustable for any purpose, up and down, as well as round and round. All the inclined planes, or any one or more of them, may be adjusted and set so as to stretch the whole, or the upper or lower, and of the boot-leg of any pattern, as may be desired, with an equal strain, the front and back part of the tree spreading equally from the centre piece.

By pressing down the foot piece till the sliding crossheads pass from under the holding flanges on the sides of the inclined planes, either the front or the back part of the boot-tree may be changed to modify the pattern, without disturbing the other part.

The boot-tree may be raised from its rest for the purpose of putting on or taking off the boot, and by drawing the rod which de-
21 taches the catch in the drop piece, the tree falls into its rest again by its own weight.

Claims.

1. I claim the application and use in a boot-tree of the inclined planes with sliding crossheads, to stretch a boot substantially as described.

2. I claim the connecting arms (*v*,) the drop piece (*w*,) with its catch, the spring (*y*,) and the rod (*z*,) operating substantially as described.

3. I claim the catches (*j*) in the central rod (*d*,) operating as described.

REUBEN L. LEWIS.

Witnesses:
J. GILES.
CALEB A. BLOOD.

And it appeared that said application having been examined by the Patent Office, the specification was returned to the said Lewis 8th March, 1855, with a letter from the Commissioner of Patents in the words following, to wit:

"U. S. PATENT OFFICE,
"*March 8th*, 1855.

"SIR: Your specification of alleged improvements in treeing boots is herewith returned to you for amendment by erasure of the first and third claims.

22 "The principle of the inclined plane has been applied to stretching boot-trees a variety of ways; you are referred to those of Henry Wright, patented January 16th, 1849, and of Wm. Upfield, patented June 25th, 1850. It is not perceived that there is any peculiarity in your application of this method which could be considered as affording a basis for a patent.

"The subject of your third claim is a very common device for resisting at given points the action of a spring, and in its present use involves no point of patentability.

"Yours, &c.,

"C. MASON, *Com'r.*"

To which letter the attorney of the said Lewis replied on the 8th May, 1855, as follows, viz:

BOSTON, *May 8th*, 1855.

To the Commissioner of Patents:

SIR: Your letter of March 8th was duly received, returning the specification of Reuben L. Lewis, of his improved boot-tree for amendment by erasing the first and third claims. I immediately notified Mr. Lewis and his assignee, Mr. Godfrey, and requested their attention to this matter, but neither of them have called to
23 attend to your suggestions. Not deeming it right that the business of the office should be delayed by the neglect of the applicants for patents, without prejudice to Mr. Lewis's rights, and in accordance with suggestion of the office, I hereby amend his specification by striking out the first and third claims.

Truly,

J. GILES,
4 Court street, Boston.

And that on 17th of said May, the remaining, to wit, the second, claim in said specification was rejected by letter of the Commissioner in the words and figures following, to wit:

U. S. PATENT OFFICE,
May 17th, 1855.

SIR: Upon a re-examination of the original second claim in the case of your alleged improvements in boot-trees, it is not found that there is any peculiarity in your adaptation or use of the lever and drop catch which would invest said application with patentability. The device as means of elevating and maintaining the elevation is not new in itself, and useless on account of some peculiarity in its use, could form no basis for a patent. Your application must therefore, I regret to say, be rejected.

Respectfully, yours,

24 C. MASON, *Com'r.*

To R. L. LEWIS, Esq'r.,
Care of J. Giles, Boston.

It also appeared that, under the practice of the Patent Office then existing, applicants were not allowed to withdraw their application and receive back twenty dollars of the fee after a second rejection of their claims, but could do so at any time prior to a second rejection. And evidence was offered to show that the practice of patent agents, sanctioned by the Patent Office, was, that when an application had been once rejected, if the applicant wished to commence anew, and to get his withdrawal fee of twenty dollars, to apply as part of the fee on a new application, he should withdraw his first application, asking for another hearing; and that by the advice of a patent attorney, in pursuance of this policy or practice, and for other reasons, the said Lewis, his application having been as aforesaid once rejected, and having received from the Commissioner of Patents a letter in the following words and figures, to wit:

"U. S. PATENT OFFICE,
"*March* 14*th*, 1857.

"SIR: In reply to yours of the 11th instant, relative to the application of R. L. Lewis for a patent for an alleged improvement in boot-trees, you are informed that the same having been but once rejected, is entitled to a re-examination upon compliance with the rules in such cases. Any amendment that Mr. Lewis may desire to offer, and any observations relating thereto, will be carefully considered.

"Resp'y, yours, &c.,

"C. MASON, *Com'r.*"

Did, on the 24 April, 1857, withdraw his said application by letter of the following tenor, to wit:

To the Commissioner of Patents:

SIR: I hereby withdraw my application for a patent for improvement in boot-trees now in your office, and request that twenty dollars may be refunded to me, agreeably to an act of Congress in such cases made and provided.

R. L. LEWIS.

APRIL 24, 1857.

And on the same day with such withdrawal filed a new application embracing the specification which is contained in the patent declared on and above recited, and a petition and oath of invention accompanying the same, in the words and figures following, to wit:

To the Commissioner of Patents:

The petition of Reuben L. Lewis, of Milford, in Worcester county, State of Massachusetts, respectfully represents: That your petitioner has invented an improvement in boot-trees which has not, as he verily believes, been heretofore used or known, and that he is desirous that letters patent of the United States may be granted to him therefor, securing to him and his legal representatives the exclusive right of making and using, and of vending to others the privilege to make or use the same, agreeably to the provisions of the acts of Congress in that case made and provided, he having paid thirty dollars into the treasury of the United States, and complied with the other requirements of said acts. And your petitioner does hereby authorise and empower Chas. G. Page, as attorney for your petitioner, to alter or modify the within specification, and claim as he may deem expedient; and also to receive back any moneys which your petitioner may be entitled to withdraw, and to receipt for the same, and also to receive the patent, when granted, for transmission to him.

R. L. LEWIS.

27 CITY AND COUNTY OF WASHINGTON, D. C., *ss:*

On this 6th day of April, 1857, before the subscriber, a notary public in and for the said county, personally appeared the within-named Reuben L. Lewis, and made solemn oath according to law that he verily believes himself to be the original and first inventor of the within described improvement in boot-trees; that he does not know or believe that the same has been before used or known, and that he is a citizen of the United States.

EDW. F. BROWN, *Notary Public.*

And that said application was rejected by letter of the Commissioner of Patents in the words and figures following, to wit:

U. S. PATENT OFFICE,
April 27, 1857.

SIR: In the examination of your application for a patent for an alleged improvement in boot-trees, it is thought that your claim is fully anticipated in the patent issued to William Upfield, June 25, 1850, which represents a boot-tree in which the back is combined with the axial stretching rod by means of inclined guide and
28 crossheads, and in which the backs can be as readily changed as in yours. A patent must therefore be refused.

Respectfully yours, &c.,

S. T. SHUGERT,
Act'g Comm'r.

And that said application was, after argument, again rejected by letter of the Commissioner of Patents in the words and figures following, to wit:

U. S. PATENT OFFICE,
January 21, 1858.

SIR: Your application for a patent for an alleged improvement in boot-trees has been re-examined in view of your letter of December 14th, but it does not appear that your claim contains a sufficient degree of novelty to entitle you to a patent, as stated in the official letter of April 27, 1857. The main feature of your device is anticipated in the patent of Wm. Upfield, June 25th, 1850.

You desire to limit the claim to mounted swivelling boot-trees, but it appears that mounted swiveling boot-trees with detachable backs and fronts have long been in use, and may be seen in the patent of Charles T. Eames, granted May 27, 1856, and in the applica-
29 tion of R. L. Lewis, rejected May 17, 1855, in both of which this feature is shown and not claimed. In addition to the above, affidavits are on file in this office setting forth the fact that the device was known and used as early as November, 1854. In view of the above a patent must be refused.

Respectfully yours,

J. HOLT, *Comm'r.*

And that said application was finally granted, and the letters patent declared on issued to said Lewis, dated March 2d, 1858.

It was not contended by the counsel for the defendant that the said Lewis had abandoned his invention or patent by his said withdrawal, dated 24 April, 1857, or otherwise. The following rules of practice existing at the Patent Office from 1854 to 1859 were in evidence:

"No application can be examined, nor can the case be placed upon the files for examination, until the fee is paid and the model or specimen deposited, and a specification, together with a petition, oath, and drawings, (when required,) are filed.

"A defective specification or drawing is amendable at any time before the patent issues. But when any substantial change
30 is made by describing or representing a new invention, not included as a part of the invention originally described, a second affidavit must be made to the specification as amended, and the signature of witnesses will also be required anew."

In some cases amendments will be permitted to be made by writing out the entire paper anew, but even when this is done, the original paper must be returned and preserved. Also the following, entitled, "of withdrawals:" "If, when an application is rejected, the applicant relinquishes his claim in pursuance of the 7th section of the act of 1836, and the 12th section of the act of 1837, he must notify the Commissioner of the fact of such withdrawal, sending at the same time his receipt for two-thirds of the fee paid by him, which will be thereupon returned. The model and papers will be retained by the office. The applicant may, however, have the duplicate drawing if he desires it." Also the following, entitled "of appeals:" "If the applicant, instead of withdrawing, chooses to persist in his claim, he must make his oath or affirmation anew. After which he may appeal to the chief justice or to either of the associate justices of the
31 circuit court of the District of Columbia."

Upon these facts the court instructed the jury that the plaintiff could not recover, to which instruction the plaintiff excepts, and prays that his exception may be allowed.

By attorneys— BROWNE & MAYNADIER.

The foregoing bill of exceptions having been examined and found to be conformable to the truth, are hereby allowed, under my hand and seal.

P. SPRAGUE, [SEAL.]
Judge of the U. S., Mass. Dist.

A true record. Attest:

H. W. FULLER, *Clerk.*

32 UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify that the

foregoing is a true copy of the record and of all proceedings in the cause of Benjamin D. Godfrey *vs.* Charles T. Eames, in this court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at Boston, in said district, this twentieth day of November, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-seventh.

[SEAL.]

H. W. FULLER, *Clerk.*

Filed Dec. 1, 1862.

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H. W. FULLER, *Clerk.*

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